



**DEPARTMENT OF THE ARMY**  
**U.S. ARMY CORPS OF ENGINEERS, HONOLULU DISTRICT**  
**FORT SHAFTER, HAWAII 96858-5440**

November 21, 2011

REPLY TO  
ATTENTION OF:

Regulatory Branch

POH-2010-00079

Grant Y.M. Chun  
A&B Properties, Inc.  
11 S. Puunene Avenue  
Kahului, Hawaii 96732

Dear Mr. Chun:

We have reviewed your Request for Appeal (RFA) dated September 27, 2011 and are providing our response as explained in the attached October 12, 2011 letter from BG Richard L. Stevens, Commander, U.S. Army Corps of Engineers (Corps), Pacific Ocean Division. The RFA and BG Stevens letter were in response to Department of the Army (DA) authorizations to perform maintenance work at the makai end of culverts draining the Maui Industrial Offsite Drainage Channel located at the Pacific Ocean, and replace culverts in this same channel, all located northeast of the intersection of Hana Highway and Hobron Avenue in Kahului, Island and County of Maui, Hawaii (TMK: (2) 3-7-011:027).

A Provisional Initial Letter of Permission (LOP) was issued on August 1, 2011 under File No. POH-2010-00079 for work to remove sand and remove and replace boards at the makai ends of the culverts. The LOP was Provisional based on the fact that by Federal law, the Corps may not issue a DA permit until Coastal Zone Management (CZM) Act consistency requirements have been satisfied. The State of Hawaii Department of Business, Economic Development, and Tourism's (DBEDT) Office of Planning is the agency responsible for issuing the CZM consistency determination. As of August 1, 2011, the DBEDT had not issued a CZM consistency determination for the proposed work. The DBEDT still has not issued a CZM consistency determination. The DA permit will authorize the proposed work if the DBEDT issues CZM consistency determination or waiver thereof. If the DBEDT does not concur with your CZM consistency determination, then the Corps must deny without prejudice your request for a DA permit.

A Provisional Nationwide Permit (NWP) was issued on February 23, 2011 under File No. POH-2011-00026 for the proposed reinforcement of three culverts beneath the same drainage channel. You were informed that the NWP was Provisional based on the fact that we cannot issue a final verification for NWP#3 until the Clean Water Branch, State of Hawaii Department of Health (DOH) issues a Section 401 Water Quality Certification (WQC) or waiver for your proposed culvert reinforcement. In subsequent Email conversations with our office, we agreed that the project was exempt from permitting under Section 404 of the Clean Water Act (Section 404); however, a permit was still required under Section 10 of the Rivers and Harbors Act of 1899 (Section 10). At that time, this office informed you that if the DOH required a 401 WQC for the project, the provisional status of our permit remains until a WQC is issued.

Confusion regarding the appeals process arose due to several factors: 1) We interrupted the processing of a DA permit application for the culvert end work to accommodate your request for permit to process a permit to replace the channel culverts and assigned a new file number to this new action; 2) We marked the RFA form as a "Proffered Permit" when it should have been marked "Initial Proffered Permit"; and 3) An approved Jurisdictional Determination (JD) was never issued with any of the actions. An Initial Proffered Permit cannot be appealed, but you are given an opportunity to explain why you disagree with permit wording or conditions. An approved JD can be appealed any time within 60 days of it being provided to you.

At this time we are once again sending a Provisional Initial Proffered Permit and including the approved JD for the channel. All work shall be performed in accordance with the attached drawings. In order for you to utilize this authorization, your activity must comply with the enclosed General and Special Conditions and with the attached Pac-SLOPES General and Special Conditions and Best Management Practices (BMPs) from NOAA, National Marine Fisheries Service, Protected Resources Division. The work must also comply with conditions of the Hawaii Coastal Zone Management (CZM) consistency concurrence when issued to you by the DBEDT. Any material changes in the location or plans of the work herein authorized must be submitted to the District Engineer prior to commencement of work. As required by law, the revised plans must have written approval of the Department of the Army.

We have also removed Special Condition 2 from the permit as it is outside of the Corps jurisdiction to require conditions concerning an activity which the Corps does not regulate. We do recommend, however, that you apply Best Management Practices when manually removing vegetation from the channel.

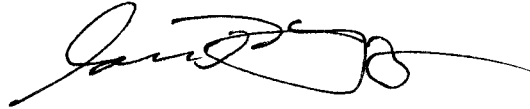
Attached to this letter is a document titled "Notification of Administrative Appeals Options and Process and Request for Appeal", which outlines your options regarding this Letter of Permission. If you accept the permit, you may start the authorized work once you receive your CZM consistency concurrence from DBEDT. Starting work is considered your specific agreement to all terms and conditions of the Permit. If you accept the permit you do not need to sign or submit the appeals form. If you elect to return the appeals document, your response is required within 60 days from the date of this letter. This permit will expire 10 years from the date of this letter.

Thank you for your cooperation with our regulatory program. Please be advised you can provide comments on your experience with the Honolulu District Regulatory Branch by accessing our web-based customer survey form at <http://per2.nwp.usace.army.mil/survey.html>

If you have questions regarding this authorization, please call Mr. Robert Deroche of my staff at (808) 438-2039 or by email at [robert.d.deroche2@usace.army.mil](mailto:robert.d.deroche2@usace.army.mil) and refer to File No. POH-2010-00079 on all future inquiries regarding this project.

Thank you for working with the U.S. Army Corps of Engineers to protect the aquatic resources of Hawaii.

BY AUTHORITY OF THE SECRETARY OF THE ARMY:

A handwritten signature in black ink, appearing to read 'George P. Young', with a long horizontal line extending to the right.

GEORGE P. YOUNG, P.E.  
Chief, Regulatory Branch

For and on behalf of  
District Commander  
Douglas B. Guttormsen  
Lieutenant Colonel, U.S. Army  
District Engineer

Enclosures

## General Conditions:

1. The time limit for completing the work authorized ends on **November 21, 2021**. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.
2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.
3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.
4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the following space provided and forward a copy of the permit to this office to validate the transfer of this authorization.

When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

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(TRANSFeree)

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(DATE)

5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached if it contains such conditions.
6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

## Special Conditions:

1. The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.
2. Manual vegetation removal within the Maui Industrial Park Offsite Drainage Channel must adhere to the following requirements from NOAA, NMFS HCD:
  - a. Manual removal of vegetation along channel banks is conducted in such a fashion as to cause minimal disturbance to the soil/sediment during any vegetation removal activities;
  - b. Vegetation control is to be conducted during the dry-season and shall cease during any rains/storms and not recommence until conditions have returned to pre-storm/event conditions;
  - c. Best Management Practices (e.g., silt curtains, sediment barriers) shall be used across the channel downstream of the vegetation removal in order to contain/minimize soil/sediment transport to the makai ponds and the ocean.

Further Information:

1. Congressional Authorities: You have been so authorized to undertake the activity described above pursuant to:

(x) Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).

2. Limits of this authorization.

a. This permit does not obviate the need to obtain Federal, state, or local authorizations required by law.

b. This permit does not grant any property rights or exclusive privileges.

c. This permit does not authorize any injury to the property or rights of others.

d. This permit does not authorize interference with any existing or proposed Federal project.

3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:

a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.

b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.

c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.

d. Design or construction deficiencies associated with the permitted work.

e. Damage claims associated with any future modifications, suspension, or revocation of this permit.

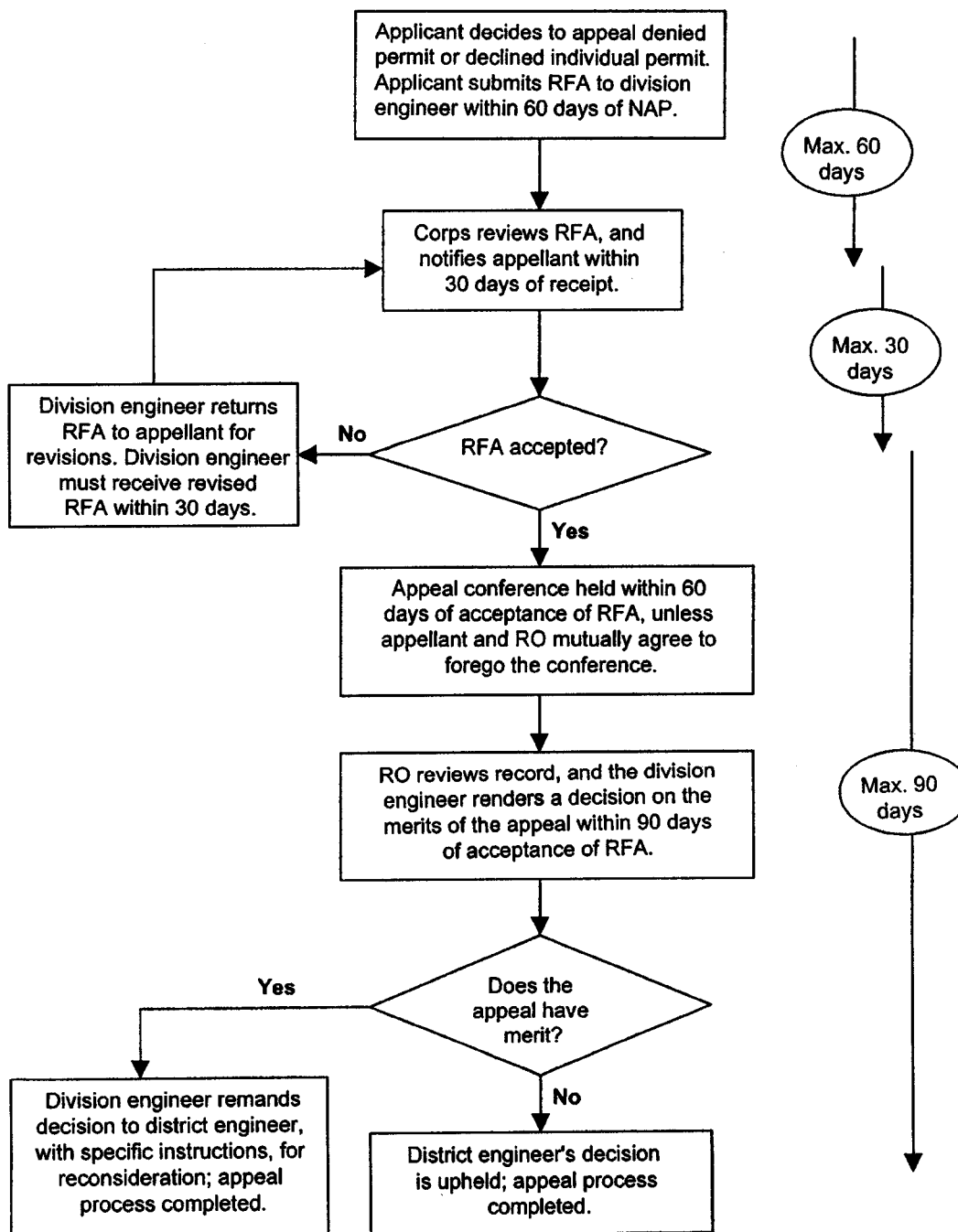
4. Reliance on Applicant's Data: The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance of the information you provided.

5. Reevaluation of Permit Decision. This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

a. You fail to comply with the terms and conditions of this permit.

b. The information provided by you in support of your permit application proves to have been false,

## Administrative Appeal Process



Appendix A

## NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: Grant Y.M. Chun, A&B Properties, Inc.	File Number: POH-2010-00079	Date: November 21, 2011
Attached is:		See Section below
XX	INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)	A
	PROFFERED PERMIT (Standard Permit or Letter of permission)	B
	PERMIT DENIAL	C
XX	APPROVED JURISDICTIONAL DETERMINATION	D
	PRELIMINARY JURISDICTIONAL DETERMINATION	E

**SECTION I -** The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at <http://www.usace.army.mil/inet/functions/cw/cecwo/reg> or Corps regulations at 33 CFR Part 331.

**A: INITIAL PROFFERED PERMIT:** You may accept or object to the permit.

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **OBJECT:** If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

**B: PROFFERED PERMIT:** You may accept or appeal the permit.

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **APPEAL:** If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

**C: PERMIT DENIAL:** You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

**D: APPROVED JURISDICTIONAL DETERMINATION:** You may accept or appeal the approved JD or provide new information.

- **ACCEPT:** You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- **APPEAL:** If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

**E: PRELIMINARY JURISDICTIONAL DETERMINATION:** You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

## **SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT**

**REASONS FOR APPEAL OR OBJECTIONS:** (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

**ADDITIONAL INFORMATION:** The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

### **POINT OF CONTACT FOR QUESTIONS OR INFORMATION:**

If you have questions regarding this decision and/or the appeal process you may contact:

Robert D. Deroche  
U.S. Army Corps of Engineers  
Honolulu District, Attn: CEPOH-EC-R  
Building 230  
Fort Shafter, Hawaii 96858-5440

If you only have questions regarding the appeal process you may also contact:

Thom Lichte  
U.S. Army Corps of Engineers, Pacific Ocean Division  
ATTN: CEPOD-PDC  
Building 525  
Fort Shafter, HI 96858-5440

**RIGHT OF ENTRY:** Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

<div></div> <div>Signature of appellant or agent.</div>	<div>Date:</div> <div></div>	<div>Telephone number:</div> <div></div>
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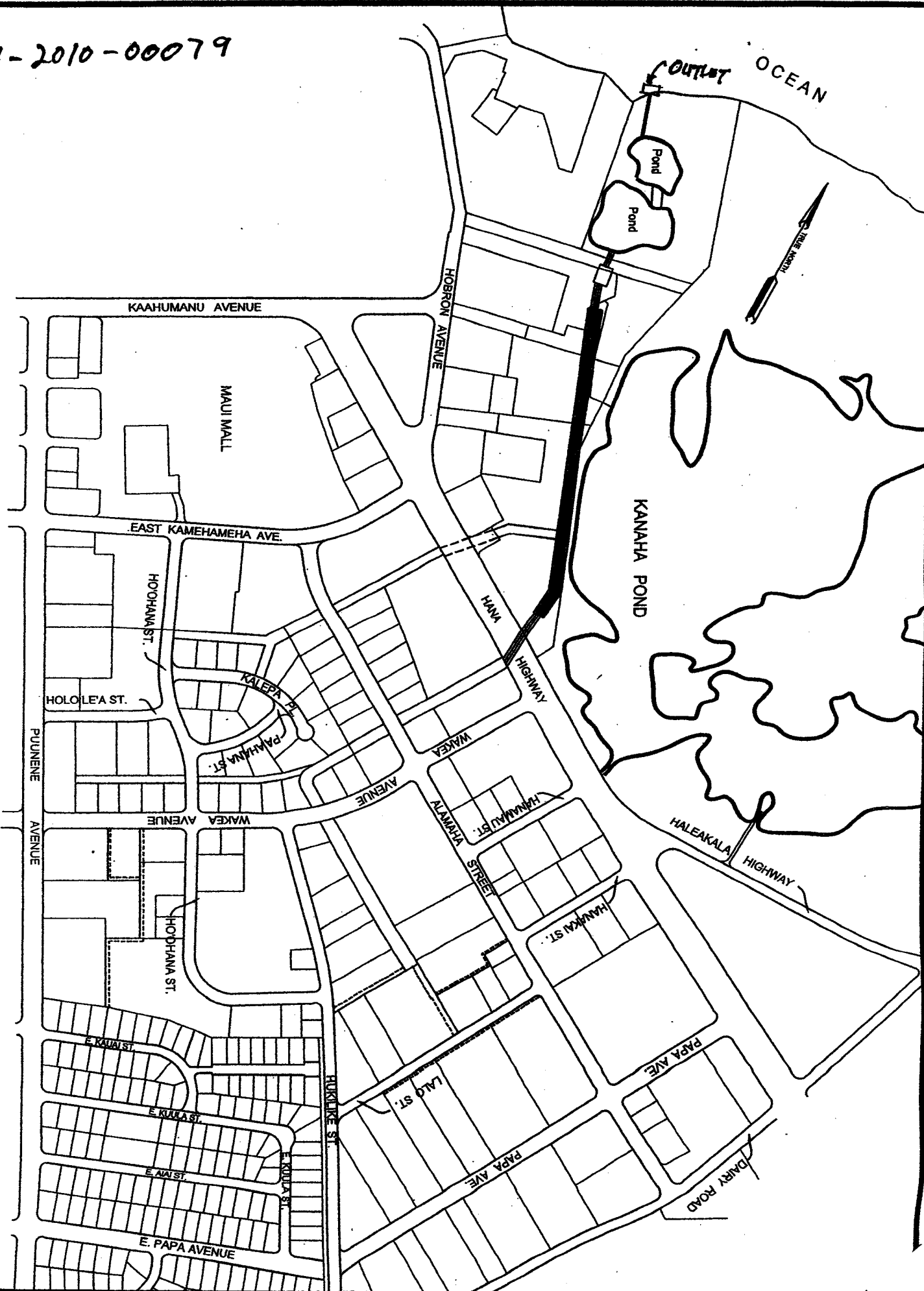
Mail to:

Thom Lichte  
U.S. Army Corps of Engineers,  
ATTN: CEPOD-PDC  
Building 525  
Fort Shafter, HI 96858-5440



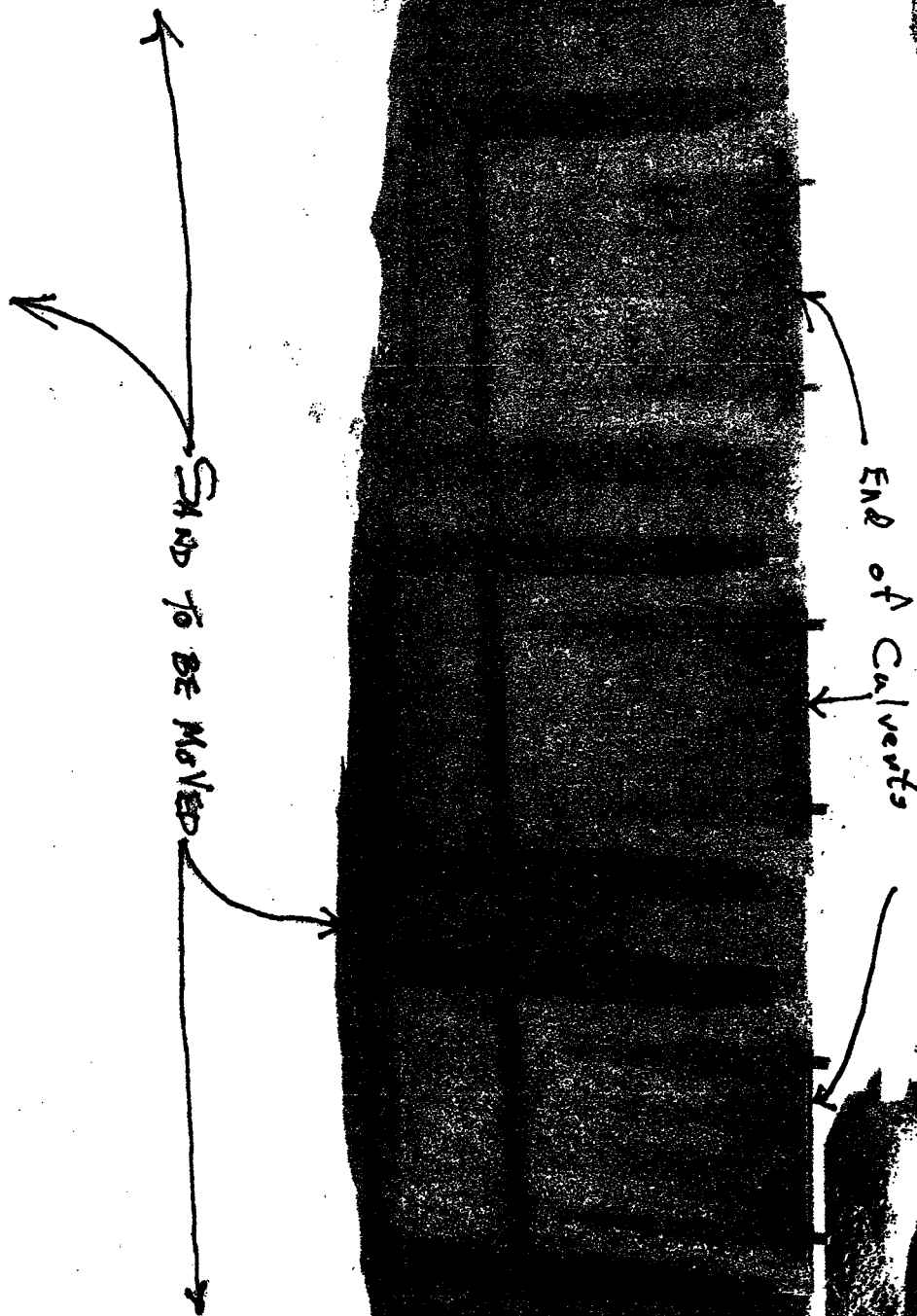
# VICINITY MAP

Kahului, Maui



POH-2010-00079

Looking MaKa



## **Pac-SLOPES General Conditions**

**GENERAL CONDITIONS:** The following general conditions apply to each action authorized under Pac-SLOPES. Additionally, activity-specific Best Management Practices (BMPs), which are included in this verification, apply as appropriate.

1. The permittee shall grant the U.S. Army Corps of Engineers (the Corps) a right of reasonable access to monitor compliance with and the effectiveness of permit conditions.
2. The permittee shall inform the Corps and NOAA National Marine Fisheries Service, Pacific Islands Regional Office, Protected Resource Division (NMFS PRD) each interaction with a species listed under the Endangered Species Act (ESA) (ESA-listed species) and shall include information on the disposition of any ESA-listed species that is injured or killed.
3. In the event that work authorized under Pac-SLOPES results in a "take" of an ESA-listed species, as defined by the Endangered Species Act, that "take" must be reported to the Corps, and all work shall stop until the Corps, after consultation with NMFS PRD, notifies the permittee that the authorized work may resume. (The term "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct).
4. Constant vigilance shall be kept for the presence of ESA-listed species during all phases of the authorized work.
  - a) A responsible party, i.e., permittee/site manager/project supervisor, shall designate a competent observer to survey work sites and the areas adjacent to the authorized work area for ESA-listed species;
  - b) Surveys shall be made prior to the start of work each day, including prior to resumption of work following any break of more than one half hour. Periodic additional surveys throughout the work day are strongly recommended;
  - c) All in-water work will be postponed or halted when ESA-listed species are within 50 yards of the authorized work and will only begin/resume after the animals have voluntarily departed the area, with the following exception: if ESA-listed species are noticed within 50 yards of the authorized work after work has already begun, that work may continue only if, in the best judgment of the responsible party, the activity is unlikely disturb or harm the animal(s), for example, divers performing surveys or underwater work (excluding the use of toxic chemicals) is likely safe, the use of heavy machinery is not; and
  - d) No one shall attempt to feed, touch, ride, or otherwise intentionally interact with any ESA-listed species.
5. Project footprints shall be limited to the minimum area necessary to complete the authorized work.

6. The project area shall be flagged to identify sensitive resource areas, such as seagrass beds, ESA-listed terrestrial plants, and turtle nests.

7. The authorized work shall be timed to minimize effects on ESA-listed species and their habitats.

8. The authorized work shall cease under unusual conditions, such as large tidal events and high surf conditions, except for efforts to avoid or minimize damage to aquatic resources.

9. To ensure that effects to water quality and hydrology are minimized, a stormwater management plan, commensurate with the size of the authorized work, shall be prepared and carried out for any authorized work that will produce any new impervious surface or a land cover conversion that will slow the entry of water into the soil.

10. A pollution and erosion control plan for the authorized work site and adjacent areas shall be prepared and carried out. At a minimum, this plan shall include and require:

a.) Proper installation and maintenance of silt fences, sausages, equipment diapers, and/or drippans;

b.) A contingency plan to control and clean spilled petroleum products and other toxic materials;

c.) Appropriate materials to contain and clean potential spills will be stored at the work site, and be readily available;

d.) All project-related materials and equipment placed in the water will be free of pollutants;

e.) Daily pre-work inspections of heavy equipment for cleanliness and leaks, with all heavy equipment operations postponed or halted until leaks are repaired and equipment is cleaned;

f.) Fueling of project-related vehicles and equipment will take place at least 50 feet away from the water, preferably over an impervious surface;

g.) A plan to prevent trash and debris from entering the marine environment during the project; and

h.) All construction discharge water (e.g., concrete washout, pumping for work area isolation, vehicle wash water, drilling fluids) must be treated before discharge.

11. Any necessary and appropriate erosion controls shall be properly installed before undertaking the authorized work.

12. Temporary access roads and drilling pads shall avoid steep slopes, where grade, soil types, or other features suggest a likelihood of excessive erosion or failure; existing access routes shall be utilized or improved whenever possible, in lieu of construction of new access routes.

13. All disturbed areas must be immediately stabilized following cessation of activities for any break in work longer than 4 days.

14. Drilling and sampling are restricted to uncontaminated areas, and any associated waste or spoils must be completely isolated and disposed of in an upland location.

15. The authorized work shall comply with all applicable NWP General and Regional Conditions.

## **Pac-SLOPES SPECIAL CONDITIONS**

In addition to the general conditions listed the following special conditions are required under Pac-SLOPES for each activity:

### **2.2.6 Maintenance Dredging**

1. With the exception of the actual dredging apparatus (e.g. clamshell buckets, or the scoop and articulated arm of a backhoe, etc.), heavy equipment will be operated from above and out of the water;
2. The portions of the equipment that enter the water will be clean and free of pollutants;
3. Appropriate silt containment devices must be used and properly installed to avoid degradation of adjacent coral reefs, and aquatic vegetation; and
4. Dredged material must be deposited at upland sites, or at EPA designated ocean disposal sites provided sediment standards are met.
5. Dredging of coral reefs, sites that support submerged aquatic vegetation (including sites where submerged aquatic vegetation is documented to exist but may not be present in a given year), and wetlands, is not authorized;
6. Use of hydraulic dredging (aka vacuum, suction, hopper) is not authorized;
7. Any form of blasting is not authorized; and
8. Any dredging for the purpose of connecting canals or other artificial waterways to navigable waters is not authorized.

### **2.2.7 Minor Discharges and Excavations**

NWP # 19 authorizes minor dredging below OHW or the high tide line from navigable waters of the United States, provided the activity meets all of the following criteria:

1. The dredging involves no more than 25 cubic yards below the plane of OHW or the mean high water mark;
2. The dredging will result in no degradation of coral reefs, submerged aquatic vegetation, or wetlands; and
3. The dredging involves no connection of canals or other artificial waterways to navigable waters.

Additionally, the following conditions apply to minor discharges and excavations (dredging) covered under Pac-SLOPES:

1. The dredged or discharged material will be free of contamination; and
2. The site of excavation or discharge will contain no known forage or resting habitat for ESA-listed marine species.

### **2.2.9 Outfall Structure Repair & Replacement**

1. The following actions are expressly excluded from coverage under Pac-SLOPES:
  - a.) Installation of new or expanded outfall structures; and
  - b.) Relocation of existing outfall structures.

### **Pac-SLOPES Activity Specific BMPs**

The following Best Management Practices (BMPs) apply to each action authorized under Pac-SLOPES.

#### **5.2. Direct physical impact:**

1. Before any equipment, anchor(s), or material enters the water, a responsible party, i.e., permittee/site manager/project supervisor, shall verify that no ESA-listed species are in the area where the equipment, anchor(s), or materials are expected to contact the substrate. If practicable, the use of divers to visually confirm that the area is clear is preferred.
2. Equipment operators shall employ "soft starts" when initiating work that directly impacts the bottom. Buckets and other equipment shall be sent to the bottom in a slow and controlled manner for the first several cycles before achieving full operational impact strength or tempo.
3. All objects lowered to the bottom shall be lowered in a controlled manner. This can be achieved by the use of buoyancy controls such as lift bags, or the use of cranes, winches, or other equipment that affect positive control over the rate of descent.
4. Equipment, anchor(s), or materials shall not be deployed in areas containing live corals, sea grass beds, or other significant resources.

#### **5.5 Exposure to elevated noise levels:**

1. For any equipment used in undertaking the authorized work, the 160 dB and 120 dB isopleths shall not exceed the 50 yard shut-down range for impulsive and continuous sound sources, respectively.
2. Maintenance dredging, in-water excavation, movement of large armor stones, and benthic core sampling shall not be undertaken if any ESA-listed species is within 50 yards of the authorized work, and those operations shall immediately shut-down if an ESA-listed species enters within 50 yards of the authorized work.



DEPARTMENT OF THE ARMY  
PACIFIC OCEAN DIVISION, U.S. ARMY CORPS OF ENGINEERS  
FORT SHAFTER, HAWAII 96858-5440

REPLY TO  
ATTENTION OF

Programs Directorate

12 OCT 2011

Hideo Kawahara  
A&B Properties, Inc.  
11 Puunene Avenue  
Kahului, Hawaii 96732-1608

Dear Mr. Kawahara:

Pacific Ocean Division received your September 27, 2011, Request for Appeal (RFA) of a Letter of Permission issued by the U. S. Army Corps of Engineers, Honolulu District, dated August 1, 2011 for proposed work on the Maui Industrial Park Offsite Drainage System. At this time we cannot accept your RFA.

In your request for appeal you explain that the jurisdictional determination (JD) upon which the permit is based is incorrect. Coordination by the Regulatory Appeals Review Officer (RO) with the Honolulu District indicates this JD was issued in association with a Nationwide Permit (NWP) to support slip lining under a separate permit application, POH-2011-00026, issued on February 23, 2011. In accordance with Title 33 of the Code of Federal Regulation Section 331.5(a)(1), a RFA for an appealable action must be received within 60 days of the date of the Notification of Administrative Appeals Options and Process/Request for Appeal form (NAP). Since the JD was issued more than 60 days from the date of receipt of your RFA, we cannot accept this reason for appeal.

The RO, in reviewing the remainder of your RFA and speaking with Honolulu District, identified that the Honolulu District was in error when it checked the box for Proffered Permit when issuing the NAP for the Letter of Permission (LOP), POH 2010-00079. The Initial Proffered Permit box should have been checked and the process outlined in that section has to be followed before a RFA can be filed with this office. The process for an Initial Proffered Permit as stated in the NAP is as follows:

A: INITIAL PROFFERED PERMIT: You may accept or object to the permit.

- ACCEPT: If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.



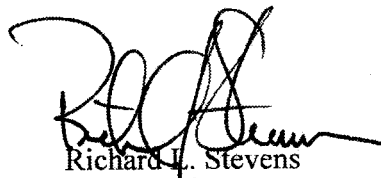
• OBJECT: If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below [Proffered Permit].

Since you have objected to the Initial Proffered Permit, I will forward a copy of your objections to the Honolulu District to reconsider its decision based on the concerns you raised in your RFA. After evaluating your objections, the District Engineer will send you a proffered permit for your reconsideration. If at that time you would still like to submit a RFA, you may do so within 60 days of its issuance.

Because Pacific Ocean Division does not have a RO on staff, I have delegated Mr. Michael Vissichelli, the RO for the North Atlantic Division, to be the Pacific Ocean Division RO on this action. Mr. Vissichelli has extensive experience in the Regulatory Program and is available to answer any questions you might have on policies and procedures associated with the appeals program.

Mr. Vissichelli can be reached via telephone at 347-370-4663, e-mail [Michael.g.vissichelli@usace.army.mil](mailto:Michael.g.vissichelli@usace.army.mil), or in writing at Fort Hamilton Military Community, 301 General Lee Avenue, Brooklyn, NY, 11252-6700. You may also contact my Regulatory Program Manager, Mr. Thom Lichte, with any questions you might have at 808-438-0397 or 808-222-8461, e-mail [Thom.E.Lichte@usace.army.mil](mailto:Thom.E.Lichte@usace.army.mil).

Sincerely,

A handwritten signature in black ink, appearing to read "Richard L. Stevens", written over a horizontal line.

Richard L. Stevens  
Brigadier General, US Army  
Commanding